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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,812	02/11/2004	Eric Poesch	102979.0513503	3351

7590 05/11/2005
FROST BROWN TODD, LLC
2200 PNC Center
201 East Fifth Street
Cincinnati, OH 45202

EXAMINER

COLLINS, TIMOTHY D

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,812

Applicant(s)

POESCH ET AL.

Examiner

Timothy D Collins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 11-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 10 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-14 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/11/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10 and 14, drawn to a glider and launcher, classified in class 446, subclass 63.
 - II. Claims 11-13, drawn to a launcher, classified in class 124, subclass 63.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the linkage which responds to the trigger are not needed, it may launch automatically or a trigger may be directly able to actuate a launch. The subcombination has separate utility such as for launching a rocket or missile.
3. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with David E. Franklin on 5/5/05 a provisional election was made without traverse to prosecute the invention of a glide and launcher (I), claims 1-10 and 14. Affirmation of this election must be made by applicant in

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replying to this Office action. Claims 11-13 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Oath/Declaration

6. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

The full name of each inventor (family name and at least one given name together with any initial) has not been set forth.

Note: the 3rd inventor's name has been corrected, and also it appears that at least 2 inventors have middle initials that have not been set forth.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 14 it is unclear with respect to what the angle of launch is limited. The examiner notes that the claim may be taken as stating that the launcher must limit the range of angle between the launcher and the glider, in which case a fixed launch angle with respect to these two will accomplish this. Also the angle could be limited in that a range from 0-360 degrees with respect to the ground could allow for the launch of the glider. Also note that in the first case where the glider is fixed to the launcher it is unclear what part of the launcher and glider is being called for in that even if the pump were separate from the support and guide, the glider would still inherently be launched parallel to the support which meets the limitation of the claim. Because of the stated reasons the claim has been treated as best understood and taken to mean that the glider must be limited to launch at some fixed angle with respect to the support.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 1-7, 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 4411249 to Fogarty et al. (hereinafter called 249) in view of USPN 2078374 to Drobniewsky (hereinafter called 374).

a. Re claim 1, 249 discloses a toy glider system with a glider (as seen in the figures at number 40 at least) and a launcher 10. The launcher having a support member 20 configured to be received by a receptacle 42. Also a pneumatic pressure source is provided at number 14, and a launch feature (hole at end of 20) is also provided. The launch feature being configured to selectively communicate pressurized medium from the pressure source to impinge on the glider, this is seen in that the hole at the end of the tube is only used when the pressure bulb is squeezed. 249 also discloses that the glider has a proximally open receptacle in number 42. 249 However may not specifically disclose that the glider has pivoting wings, but the glider of 374 does have pivoting wings as seen in at least the figures. The wings 18 are configured with pivot 20 so as to open when the craft becomes reversed in its longitudinal position. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied the teachings of a pivoting wing glider into the device of 249 so as to provide for greater entertainment in that the glider of 374 according to column 1 at lines 10-17 states that this is "fascinating in its evolutions in the air, and capable of affording a pleasurable out-of-doors entertainment". The actual modification of the device would be that the glider of 374 would be modified with a small aperture 42 such as that of the glider of 249

in rear of the main bar 15 so as to provide for pneumatic launch instead of the catapult launch of 374.

b. Re claim 2, as seen in the above rejection of claim 1, the fuselage 15 of 249 as modified above, discloses a receptacle 42.

c. Re claim 3, as seen in the above rejections of claims 1 and 2, the receptacle is cylindrical and the support member is comprised of a tube configured to slidably engage with the receptacle.

d. Re claim 4, as seen in the above rejection of claim 1, the launch feature is at the distal end of the support member. Also see the figures of 249.

e. Re claim 5, as seen in the rejection of claim 1, the launch feature is a hole at the end of the support member.

f. Re claim 6, 249 discloses that the pressure source is a manual pump 14. This manual pump is configured such that when squeezed it forces air through the support member.

g. Re claim 7, 249 as modified above discloses a release valve (interaction of 19 (sealing ring) and 24 (second flange)) this "valve" is operates in that if a huge amount of pressure is built up by the pump this ring and flange will separate. Thus the valve feature is responsive to the amount of pressure created by the pump and provides for some maximum amount of pressure that may be created by the pump.

h. Re claim 10, 249 discloses a toy glider system with a glider (as seen in the figures at number 40 at least) and a launcher 10. 249 However may not

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specifically disclose that the glider has pivoting wings, but the glider of 374 does have pivoting wings as seen in at least the figures. The wings 18 are configured with pivot 20 so as to open when the craft becomes reversed in its longitudinal position. This pivot is controlled by a locking mechanism which holds the wings retracted until the craft is reversed in its longitudinal position, as seen at least in column 2 at lines 22-30. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied the teachings of a pivoting wing glider into the device of 249 so as to provide for greater entertainment in that the glider of 374 according to column 1 at lines 10-17 states that this is "fascinating in its evolutions in the air, and capable of affording a pleasurable out-of-doors entertainment". The actual modification of the device would be that the glider of 374 would be modified with a small aperture 42 such as that of the glider of 249 in rear of the main bar 15 so as to provide for pneumatic launch instead of the catapult launch of 374. Also note that the locking mechanism is configured to change from a locked position to an unlocked position when the craft is launched, this is seen in that the craft must be launched and reach the highest point in the air and then become reversed which triggers the opening of the wings.

- i. Re claim 14, as seen in the rejection of claims 1 and 10 above, a toy glider system is provided with pivoting wings and a launcher. The launcher also includes means to limit the angular range of the launch in that glider is in a fixed position for launch and cannot be rotated with respect to the rest of the launcher.

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The glider inherently launches parallel to the support member. See rejection under 35 USC 112 above for reasoning regarding the rejection of this claim.

Allowable Subject Matter

11. Claims 8 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record all failed to show either alone and/or in combination a glider and launcher wherein the gliders wing sweep mechanism includes the clasp, annular collar, pivot supports, hooks and elastic member of the claims 8 and 9.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following art discloses launchers and aircraft.

j. USPN 4897065


k. USPN 5343850

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy D Collins whose telephone number is 571-272-6886. The examiner can normally be reached on M-F, 7:00-3:00, with every other Fri. off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Timothy D. Collins
Patent Examiner
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